

(SEE SIGNATURE PAGE FOR ATTORNEY LIST)

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

DROPLETS, INC.,

Plaintiff,

v.

YAHOO!, INC.,

Defendant.

Case No. 12-cv-03733-JST

**SUPPLEMENT TO THE JOINT
PRETRIAL STATEMENT FOR
DROPLETS, INC. V. YAHOO! INC.**

Trial Date: September 13, 2021

OATH, INC., et al.,

Intervenor-Plaintiffs,

v.

DROPLETS, INC.,

Intervenor-Defendant.

DROPLETS, INC.,

Plaintiff,

v.

NORDSTROM, INC.,

Defendant.

On August 6, 2021, the parties filed a Joint Pretrial Statement (ECF No. 816). On August 13, 2021, the Court held a Pretrial Conference pursuant to Rule 16 of the Federal Rules of Civil Procedure. In accordance with the Court's rulings at the Pretrial Conference, Plaintiff Droplets, Inc. ("Droplets"), Defendant Yahoo! Inc. ("Yahoo"), and Intervenor-Plaintiffs Oath, Inc. and Oath Holdings Inc. (collectively "Verizon Media") hereby submit this Supplement to the Joint Pretrial Statement.

1. Amendment to Undisputed Facts

Paragraph 17 in Section 3 ("Undisputed Facts") of the parties' Joint Pretrial Statement is hereby replaced by the following:

Yahoo represents that "Summary of Source Code - Droplets v. Yahoo" (PTX 497) identifies the dates in which the different versions of the Yahoo source code within the listed Yahoo source code repository files was in operation.

2. Supplement to Bifurcation or Separate Trial Of Issues

The claims raised in Verizon Media's complaint-in-intervention are bifurcated and will be addressed separately from the jury trial scheduled to begin on September 13, 2021. Consistent with the parties' respective positions at the August 13, 2021 pretrial conference, neither party agrees that this bifurcation resolves which issues relating to Verizon Media may be presented to the jury in the jury trial scheduled to begin on September 13, 2021.

3. Amendment to Miscellaneous

Section 15.A ("Exchange of Trial Materials Before Use") of the parties' Joint Pretrial Statement is hereby replaced by the following:

A. Exchange of Trial Materials Before Use

i. Opening Statements and Closing Arguments

For opening statements, the parties will exchange the demonstrative exhibits (decks, etc.) that they intend to use by 4pm the day before they are to be used. Any objections thereto will be made in writing by 6pm, and the parties will meet and confer at 8pm the day before they are to be used. Any unresolved objections will be raised with the Court in advance of the opening statements.

1 The parties will not exchange the demonstratives exhibits (decks, etc.) for closing arguments
2 in advance (other than immediately before commencing).

3 **ii. Identification of Trial Witnesses**

4 By 4pm two calendar days before the witnesses are to be called (e.g., Saturday afternoon for
5 a Monday trial day), each party will exchange by email a list of witnesses the party intends to call or
6 present through direct examination, either live or by deposition.

7 **iii. Demonstratives for Direct Examinations**

8 By 4pm the day before they are to be used (e.g., Sunday afternoon for a Monday trial day),
9 each party will exchange demonstrative exhibits for use in direct examination by email along with an
10 identification of the witness through which they will be presented. Any objections thereto will be
11 made by email by 7pm, and the parties will meet and confer at 8pm. Any unresolved objections will
12 be raised with the Court in advance of the use of the demonstrative exhibits. Any demonstrative that
13 includes an animation, flash file, or similar moving image shall be exchanged in a manner sufficient
14 to permit the receiving party to see the moving images. Blow-ups or highlights of exhibits or parts of
15 exhibits or testimony, which contain no additional markings, commentary, or alterations, are not
16 required to be provided to the other side in advance of their use, although the exhibit itself must be
17 identified as specified under the parties' procedures.

18 **iv. Trial Exhibits for Direct Examinations**

19 By 12pm the day before they are to be used (e.g., Sunday afternoon for a Monday trial day),
20 each party will identify by email the trial exhibits they intend to have admitted on direct examination
21 along with an identification of the witness through which they will be presented. Any objections
22 thereto will be made by email by 6pm, and the parties will meet and confer about the objections at
23 8pm. Any unresolved objections will be raised with the Court in advance of the use of the trial
24 exhibits.

25 **v. Discovery Responses for Use in Direct Examinations**

26 By 4pm the day before they are to be used (e.g., Sunday afternoon for a Monday trial day),
27 each party will identify by email the discovery responses they intend to use for direct examination
28 along with an identification of the witness through which they will be presented. Any objections

thereto will be made by email by 7pm, and the parties will meet and confer about the objections at 8pm. Any unresolved objections will be raised with the Court in advance of the use of the discovery responses.

vi. Deposition Designations

Narrowing Designations in Advance of Trial:

By Monday, August 30, the parties will identify a narrowed set of their deposition designations. By Wednesday, September 1, the parties will identify their objections thereto and any counter-designations. By Thursday, September 2, the parties will identify their objections thereto and any counter-counter-designations. By Friday, September 3, the parties will identify their objections thereto. All designations, counter-designations, counter-counter-designations, and objections thereto must be selected from each party's respective designations and objections that have already been made in Appendices F and H to the Joint Pretrial Statement. On Monday, September 6, the parties will meet-and-confer to resolve any objections. On Tuesday, September 7, the parties will submit amended deposition designations and objections to the Court and will electronically transmit deposition transcripts with updated highlighting directly to the Court.

Identifying Designations for Use During Trial:

By 4pm two days before they are to be used (e.g., Saturday afternoon for a Monday trial day), each party will identify by email the deposition transcript excerpts that they intend to play for the jury (other than as counter designations). By 3pm the day before they are to be used (e.g., Sunday afternoon for a Monday trial day), any objections thereto and any counter-designations will be provided by email. By 6pm the day before they are to be used, any objections to the counter-designations and any counter-counter-designations will be provided by email. Any objections to the counter-counter-designations will be provided by 7pm, and the parties will meet and confer about all objections at 8pm. All designations, counter-designations, counter-counter-designations, and objections thereto must be selected from each party's respective designations and objections that have already been made in the parties' September 6 submission of designations and objections. Any unresolved objections will be raised with the Court in advance of the use of the deposition designations.

The above procedures regarding disclosure of demonstrative exhibits and identification of trial exhibits, discovery responses, and deposition designations do not apply to use of such materials for impeachment or cross examination of a witness, none of which needs to be provided to the other side in advance of their use.

4. COVID-19 Vaccination & Testing Requirements

Unless excused by the Court, all party-affiliated trial participants (including attorneys, staff, IT Specialists, consultants, party witnesses and party representatives) shall either: (1) be vaccinated for COVID-19 and provide proof of vaccine or (2) test negative for COVID-19 within five days prior to their first appearance at the courthouse (including appearance at voir dire or other proceedings) with confirmed negative results and provide confirmed negative results, prior to entering the courthouse. Any unvaccinated participant shall be tested weekly throughout trial and provide negative test results each week.

5. Parties' Statements Regarding the Vaccination of Jurors

Droplets' Statement:

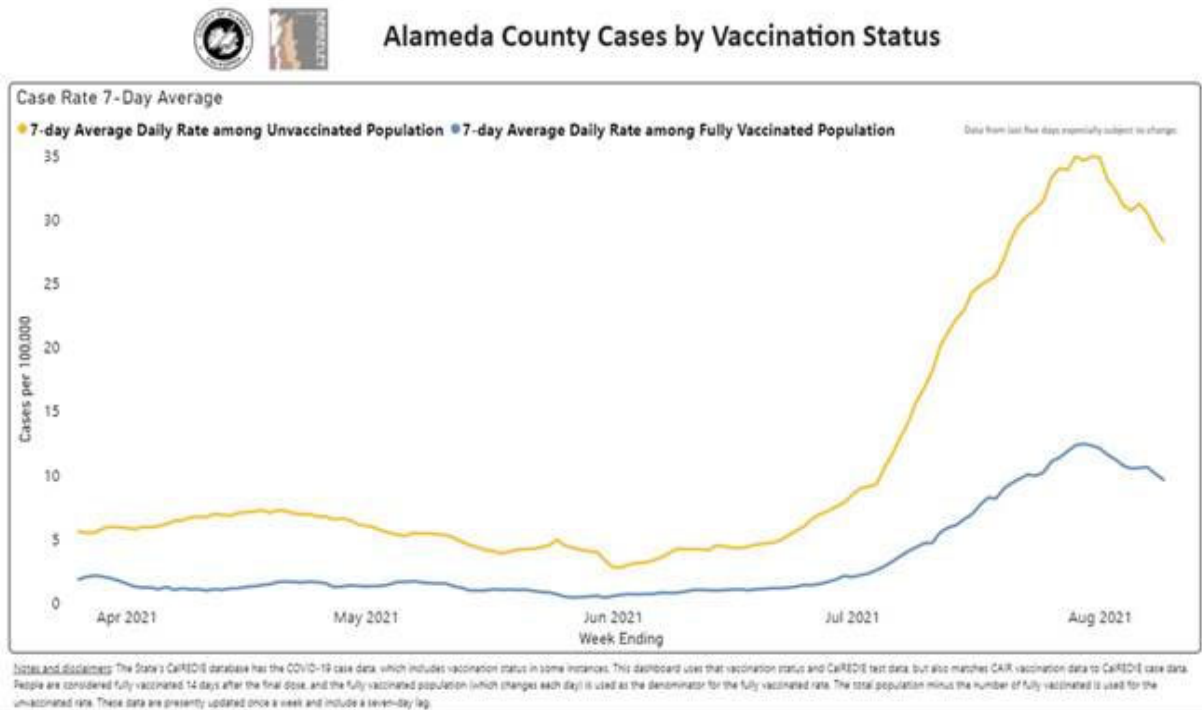
Droplets' position is that the time to object to the impact of a vaccination requirement on the jury pool will be once data about the venire panel in attendance, from which the jury is to be selected, has been made available.

Yahoo's Statement:

Given the unprecedented rise in Covid-19 cases across the country in August 2021, and the hospitalization rates from Covid-19 among the unvaccinated population, to ensure the safety of everyone involved in the trial set for September 13, 2021, Yahoo agrees with the Court's suggestion to excuse all unvaccinated jurors from jury service for this trial. See chart of cases by vaccination status in Alameda county below:

CASES BY VACCINATION STATUS

[Mobile version](#)



As of August 20, 2021, in Alameda County and Contra Costa County, the two counties that make-up the Oakland Division of the United States District Court for the Northern District of California, 76.4% and 73.4%, respectively, of all residents are fully vaccinated, and well over 80% of the residents have received at least one dose of vaccine. See <https://www.coronavirus.cchealth.org/vaccine-dashboard>; <https://covid-19.acgov.org/data.page?#vaccination>. Thus, there is little to no risk that the jury pool drawn from these counties would represent anything less than a fair cross-section of the residents of the Oakland Division if the pool is limited to vaccinated residents. Further, requiring vaccinated jurors and unvaccinated jurors to be on the same jury during this time may cause greater stress, concern or even anger among some jurors. Moreover, jury service is a duty, not an absolute right, and the law permits jurors to be excused for many hardships or for no reason at all. Alternatively, should plaintiff object to sitting only vaccinated jurors, then Yahoo respectfully requests that this Court require any unvaccinated jurors to present a negative Covid-19 test either each week of jury service or until the Delta variant of Covid-19 subsides within the Oakland Division.

/s/ Matt C. Gaudet

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7 *Yahoo!, Inc.*

8 **ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1**

9 Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document
10 has been obtained from each of the other signatories.

11 Dated: August 20, 2021

12 /s/ Jaime F. Cardenas-Navia